IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No.838 of 2001
(Old No.2411 of 1987)

Basant Kumar S/o Sri. Baboo Lal
R/o Brijlok Colony Salawala, Dehradun.

..... Appellant

Versus

The State

..... Opposite Party

Dated: July 16, 2007

Km. Vijay Laxmi, learned amicus curiae for the applicant.
Sri Nandan Arya, learned AGA for the State.

HON. DHARAM VEER, J.

This appeal, preferred u/s 449 of The Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 10.08.1987 passed by District Judge, Dehradun in Crl. Misc. Case No.1/87, State Vs. Basant Kumar.

2 This is a transfer appeal u/s 35(2) of the U.P. Reorganization Act, 2000 from the High Court of Judicature at Allahabad to the High Court of Uttarakhand. After that transfer, the notice was issued to the appellant on 05.05.2007. The notice was served personally on the appellant on 13.05.2007. Learned C.J.M., Dehradun vide his report dated 19.05.2007 has informed that the summon was personally served upon the appellant Basant Kumar. However, even after the service today there is no representation on behalf of the appellant.

3. I have heard Km. Vijay Laxmi, learned amicus curiae for the appellant and Sri Nandan Arya, learned AGA for the State.

4. Learned amicus curiae for the appellant has submitted that the order dated 10.08.87 has not been passed as per law. I have perused the judgment and order dated 10.08.1987 which is reproduced as under:-

"Case taken up. Surety Basant Kumar is absent. He failed to produce the accused. His bail bond was forfeited by the order date 20.05.87 and he was called upon to pay the penalty or to show cause why the same be not paid by him. He has done neither. Let recovery proceedings be drawn and warrant for realization of amount of Rs.3000/- be issued against him.

For the purpose of convenience, Section 446 of Cr.P.C. is reproduced as under-

446. ***Procedure when bond has been forfeited*** *– (1) where a bond under this code is for appearance, or for production of property, before a court to which the case has subsequently been transferred, that the bond has been forfeited.*

or where in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited.

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation – A condition in a bond for appearance, or for production of property , before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery or the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may [after recording its reasons for doing so], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety of sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

5. As per the procedure laid down in sub-section (1) of Section 446 Cr.P.C. the court shall record the grounds of such proof and make a call upon any person bound by such bond or to show cause why it should not be paid. Sub

Section (2) of Section 446 provides that if sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code.

6. From a perusal of order dated 10.8.1987, it reveals that the show cause was issued to the appellant and the time was given to him to show cause why the penalty should not be imposed upon him and the bail bonds of the above said case was forfeited on 20.05.87. It is pertinent to mention here that the appellant has not filed any appeal against the order dated 20.05.1987. On the next date fixed, the appellant did not appear in the trial court and he had not filed any reply to the show cause notice and even he has not paid the money. After that the learned trail court had issued recovery warrant against him for the realization of the amount of Rs.3,000/- and for that purpose, the appellant had furnished the surety bond. From a perusal of the order, it also emerges out that the order has been passed as per the provisions of sub-sections (1) and (2) of Section 446 of Cr.P.C. and the said order is perfectly justified as per law.

7. For the reasons recorded above, I do not find any illegality and irregularity in the order dated 10.8.1987 passed by District Judge, Dehradun and the said order is correct and there is no ground for interference in the said order.

8. Hence the appeal preferred by the appellant Basant Kumar is devoid of merit and is hereby dismissed. Interim order dated 24.9.1987 is vacated.

(Dharam Veer, J.)

August 20, 2007
Rajeev Dang